

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS WRAY HERNDON,

Petitioner,

v.

DWIGHT NEVEN, *et al.*,

Respondents.

Case No. 3:20-cv-00489-ART-CLB

ORDER

This habeas matter is before the Court on Petitioner Thomas Wray Herndon's unopposed motion for stay and leave to file amended opposition to motion to dismiss (ECF No. 71).

Petitioner challenges a 2015 judgment and conviction imposed by the Second Judicial District Court of Washoe County. Respondents moved to dismiss the petition as untimely and Grounds 5, 6, and 7 as unexhausted. (ECF No. 48.) The Court granted Respondents' motion to dismiss, in part, and denied, in part, finding Ground 5 unexhausted. (ECF No. 66.) The Court denied Respondents' motion to dismiss the petition as untimely without prejudice for the parties to address equitable tolling issues at an evidentiary hearing. (*Id.*)

Petitioner represents that counsel for Petitioner came into possession of evidence indicating that Petitioner's state petition was received by the Second Judicial District Court by the filing deadline. (ECF No. 71 at 2.) In June 2023, Petitioner filed a motion for relief from judgment pursuant to Nevada Rule of Civil Procedure 60(B)(6) in state court, and the motion remains pending. Petitioner requests a stay pending completion of state court proceedings, leave to file an amended opposition to Respondents' motion to dismiss, and leave to address the status of Ground 5 within 30 days of the case being reopened. Respondents do

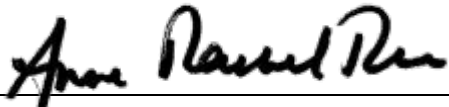
1 not oppose Petitioner's request and the parties agree that Respondent should be
2 able to respond to Petitioner's amended opposition.

3 The Court finds that a stay and abeyance is warranted as the state court
4 proceedings will likely impact the ongoing federal habeas proceedings. The Court
5 will administratively close this action. Within 45 days of entry of the issuance of
6 the remittitur by the Supreme Court of Nevada at the conclusion of all state court
7 proceedings,¹ Petitioner must return to federal court with a motion to reopen
8 wherein Petitioner may renew his request for leave to file an amended opposition
9 to Respondents' motion to dismiss and leave to address the status of Ground 5.

10 IT IS THEREFORE ORDERED as follows:

- 11 1. Petitioner Thomas Wray Herndon's unopposed Motion to Stay Case
12 (ECF No. 71) is granted.
- 13 2. This action is STAYED pending completion of the state court
14 proceedings.
- 15 3. The Clerk of the Court is directed to administratively close this action
16 until such time as the Court grants a motion to reopen the case.
- 17 4. Within 45 days of entry of the issuance of the remittitur by the
18 Supreme Court of Nevada at the conclusion of all state court
19 proceedings, Petitioner must file a motion to reopen wherein
20 Petitioner may renew his request for leave to file an amended
21 opposition to Respondents' motion to dismiss and leave to address
22 the status of Ground 5.

23 DATED THIS 7th day of July 2023.

24 
25 ANNE R. TRAUM
26 UNITED STATES DISTRICT JUDGE

27 ¹ If *certiorari* review will be sought or thereafter is being sought, either party may
28 move to extend the stay for the duration of such proceedings. *Cf. Lawrence v. Florida*, 549 U.S. 327, 335 (2007).